Supreme Court, U. S.
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MICHAEL RODAK, JR., CLE

No. 75-1921

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

WILLY DREYFUS,

Petitioner,

v.

AUGUST von FINCK and MERCK, FINCK & Co.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

Questions Presented

1. Did the Court of Appeals err when it unanimously affirmed a judgment of the District Court which dismissed petitioner's amended complaint for failure to state a claim under the Hague Convention of 1907, the Kellogg-Briand Pact, the Treaty of Versailles, the Four Power Occupation Agreement and the law of nations?

2. Did the Court of Appeals err when it unanimously held that the federal courts lack subject matter jurisdiction over a claim based on a military "law", promulgated by a United States military government in an occupied nation, which dealt primarily with the right of residents and citi-

zens and former residents and citizens of the occupied nation to obtain restitution of their property which had improperly been seized in the occupied nation by or with the assistance and consent of the occupied nation's former government?

3. Does the decision of the Court of Appeals raise any novel or important questions of law or is it in conflict with prior decisions of this Court or other Courts of Appeals so as to justify the granting of a writ of certiorari?

Counter-Statement of the Case

This is an action commenced in the United States District Court for the Southern District of New York in December, 1973 by petitioner, a citizen and resident of Switzerland, against respondents, two citizens and residents of West Germany, based on events which took place entirely in Germany more than 25 years ago.

Petitioner purported to obtain jurisdiction over the foreign defendants by attaching their bank accounts in New York and by mailing copies of the summons and complaint to the respondents in West Germany.

The district court dismissed petitioner's complaint for failure to state a claim, adhered to its decision on reargument, and granted petitioner leave to serve an amended complaint but ordered that such amended complaint:

> "shall allege with particularity the specific provisions of such treaty or treaties relied upon" (Order dated June 26, 1974).

Petitioner thereupon served an amended complaint which was substantially similar to the original complaint. After a further hearing, the district court dismissed the amended complaint for failure to state a claim, which dismissal was affirmed by the Court of Appeals.

The gravamen of the amended complaint is that in 1938 the Nazi government compelled petitioner, who is Jewish, to sell his banking firm to the respondents at an inadequate price and that petitioner sought appropriate compensation from the respondents after the end of World War II and entered into a settlement agreement in 1948, which respondents thereafter allegedly refused to honor.

Both the original and amended complaints alleged only that respondents' actions violated the law of nations and the Hague Convention of 1907, the Treaty of Versailles, the Kellogg-Briand Pact and the Four Power Occupation Agreement.

Even prior to the service of the amended complaint, respondents informed the district court that the allegedly repudiated 1948 settlement had in fact been superseded by a 1951 settlement which was approved by the United States Court of Restitution Appeals sitting in Germany under the procedures established by Military Government Law No. 59, 12 Fed. Reg. 7983 (1947), which created a mechanism for restitution claims in Germany.

Under the court-approved 1951 settlement, petitioner accepted the sum of DM 490,000 in full settlement of all claims. Petitioner has retained the proceeds of the 1951 settlement and has never offered to return them.

Despite the fact that respondents had called the 1951 settlement and the existence of Military Government Law No. 59 to the attention of the district court, petitioner's amended complaint again failed to mention either the 1951 settlement or Military Government Law No. 59.

Since petitioner has not furnished the Court with a copy of his amended complaint, which was the subject of the decisions below, a copy is annexed as an appendix to this brief.

It was not until his appeal that petitioner for the first time sought to assert a claim that there had somehow been

a violation of Military Government Law No. 59 and moved to remand the case to the district court for a fourth hearing. At the suggestion of the Court of Appeals, respondents stipulated that the Court of Appeals could also consider and decide whether a claim could be asserted under Military Government Law No. 59. The issue was accordingly fully briefed and argued before the Court of Appeals.

The Court of Appeals held that petitioner failed to state a claim under the cited treaties because the treaties did not purport to create private rights or authorize private actions to enforce them, and because the alleged forced sale at an inadequate price did not violate the terms of any of the treaties.

The Court of Appeals also held that petitioner failed to state a claim under the law of nations because public international law is primarily concerned with the relations of nations with other nations, is not self-executing and was not violated by respondents' alleged conduct.

The Court of Appeals further held that it lacked subject matter jurisdiction over claims based on Military Government Law No. 59 because it was not a "law of the United States" within the meaning of 28 U.S.C. § 1331(a).

In his brief in the Court of Appeals, petitioner asserted for the first time that the 1951 settlement was fraudulent. Petitioner's complete allegation of fraud, as set forth at page 33 of his brief in the Court of Appeals, reads as follows:

> "Plaintiff maintains that this 'settlement' was fraudulent, agreed to by plaintiff's lawyer in collusion with the defendants and without consulting or informing plaintiff."

No such allegation of fraud appeared either in the original or in the amended complaint and, in stipulating that the Court of Appeals could consider the legal issues

raised under Military Government Law No. 59, respondents were not requested to and did not consent to permit petitioner to come up with still another set of factual allegations.

Not only does this allegation fall far short of the pleading requirements of Rule 9(b) of the Federal Rules of Civil Procedure, which requires that "the circumstances constituting fraud or mistake shall be stated with particularity", but petitioner does not explain why he accepted and retained the payment of DM 490,000 if his lawyer never even consulted or informed him of the 1951 settlement and why he waited until his appeal in 1975 to allege his fraud claim for the first time.

We stress this sequence of events only because the petition seeks to make it appear that the alleged fraud in 1951 is a central issue in this case, even though petitioner never bothered to raise it in his original or amended complaint. Indeed, petitioner now seeks to embellish upon the fraud theory he presented to the Court of Appeals by alleging at page 6 of his petition, for the first time in this case, that a fraud was also perpetrated on the United States Court of Restitution Appeals.

We respectfully submit that throughout the three hearings in the District Court (on respondents' first motion to dismiss, on petitioner's motion to reargue and on respondents' second motion to dismiss) and the two hearings in the Court of Appeals (petitioner's motion to remand and the argument of the appeal), petitioner has constantly changed the facts and theory of his case. Petitioner has more than had his day in court and should not be permitted to come up with still another new theory at this late stage.*

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* Since both complaints were dismissed, respondents have not been required to serve an answer. Had an answer been served, it would not only have categorically denied petitioner's allegations of misconduct both before and after 1948 but would have asserted defenses of payment, release, accord and satisfaction, statute of limitations, laches, forum non conveniens and other defenses.

Argument

Respondents respectfully submit that the decision of the Court of Appeals is well-reasoned, comprehensive and correct in all respects, is consistent with prior decisions of this Court and other Courts of Appeal, and raises no issue that warrants this Court's review.

POINT I

The Court of Appeals correctly held that petitioner failed to state a claim under any treaty of the United States.

The Court of Appeals correctly held that petitioner failed to state a claim under the Hague Convention of 1907, 36 Stat. 2277, the Treaty of Versailles, S. Doc. No. 348, 67th Cong., 4th Sess. 3329 (1923), the Kellogg-Briand Pact, 46 Stat. 2343 (1929) or the Four Power Occupation Agreement, 5 U.S.T. 2062 (1945), both because none of their provisions purports to restrict the right of a nation or its inhabitants to confiscate property within that nation's borders, and because none of these treaties is self-executing, has been implemented by legislation, or contemplates private actions to enforce its terms.

While petitioner argues strenuously in his Petition that the Court of Appeals erred in holding that these treaties could not be enforced through private actions, the Petition says not a word about how respondents violated any of the treaties. And even a cursory review of the treaties readily discloses the reason for petitioner's silence: the treaty provisions alleged in petitioner's amended complaint afford no support to petitioner's claims.

The Hague Convention, 36 Stat. 2277 (1907), was an attempt to impose restrictions on the ways in which belligerent powers could wage war, and governed such matters as the treatment of prisoners of war and in-

habitants of occupied territory. Although Article 46, which petitioner cites, does indeed prohibit confiscation of private property, that Article is a part of a group of Regulations headed: "Military Authority over the Territory of the Hostile State." Consequently, it is clear that Article 46 prohibits confiscation by an *occupying* nation of property of citizens of *occupied* nations, and has no bearing on respondents' alleged conduct which took place wholly within Germany.

The Kellogg-Briand Pact, 46 Stat. 2342 (1929), is equally inapplicable since, as petitioner conceded below, it is but "a sweeping declaration renouncing war as an instrument of national policy".*

The provisions of the Treaty of Versailles, S. Doc. No. 348, 67th Cong., 4th Sess. 3329 (1923), relied on by the petitioner below similarly do not support petitioner's contention. Article 124 required Germany to pay reparations for damages suffered by French nationals at the hands of German nationals during World War I. Articles 227-230 permitted the Allies, with the cooperation of Germany, to prosecute German citizens for war crimes committed during World War I. Article 231 fixed responsibility for damage done Allied countries and their citizens by Germany and her allies during World War I. Article 300 provided that Allied nationals injured by acts done in Germany during World War I could file complaints in a newly created arbitration tribunal.

Finally, the Four Power Occupation Agreement, 5 U.S.T. 2062 (1945), simply provided for the governance of occupied Germany by the United States, England, the Soviet Union and France during the period at the end of World War II in which Germany was "carrying out the basic requirements of unconditional surrender".

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* Petitioner's brief in the district court in support of his petition for rehearing and reargument, p. 19.

Consequently, it is obvious that an alleged confiscation by a government or its citizens of property of its inhabitants which is located within its borders violates none of these treaties, and petitioner's attempt to state a claim under them is wholly unfounded.

Petitioner seeks, however, to divert attention from the text of the treaties and their obvious inapplicability to his claims by setting up a "straw man" in the form of a false charge that the Second Circuit held that when violations of international law occur and individuals are injured as a consequence, "the relief in each case should be negotiated by the Department of State and enforced by the Department of Defense", rather than by the courts. (Petition for Certiorari, p. 7.)

The Court of Appeals, of course, held no such thing. It merely adhered to the long standing policy expressed by this Court in *Edye* v. *Robertson* (the Head Money Cases), 112 U.S. 580 (1884), that the courts must distinguish between treaties which govern the relationships of nations and which can be enforced only through diplomacy or war, and those which:

> "contain provisions which confer certain rights upon the citizens or subjects of one of the Nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in. the courts of the country. An illustration of this character is found, in treaties which regulate the mutual rights of citizens and subjects of the contracting Nations in regard to rights of property by descent or inheritance, when the individuals concerned are aliens." (*Id.* at 598.)

See also, *Z&F Assets Realization Corp.* v. *Hull,* 114 F.2d 464 (D.C. Cir. 1940), *aff'd,* 311 U.S. 470 (1941) (holding that a private action could not be brought under the

Treaty of Berlin), *Pauling* v. *McElroy,* 164 F. Supp. 390 (D.D.C. 1958), *aff'd,* 278 F.2d 252 (1960), *cert. denied,* 364 U.S. 835 (1960) (holding that a private action could not be brought under the Charter of the United Nations or the Trusteeship Agreement for the Trust Territory of the Pacific Islands), *Camache* v. *Rogers,* 199 F. Supp. 155 (S.D.N.Y. 1961) (holding that a private action could not be brought under the United Nations Charter) and *Saipan* v. *United States Dep't. of Interior,* 356 F. Supp. 645 (D. Haw. 1973) (holding that a private action could not be brought under the Pacific Trusteeship Agreement).

The cases petitioner cites to show that the courts regularly enforce treaties that are not self-executing do not support petitioner's contention. *Martin* v. *Hunter's Lessee,* 14 U.S. (1 Wheat.) 304 (1816) and *Corbett* v. *Sergios,* 381 U.S. 124 (1965), both come directly within the group of cases *Edye* v. *Robertson, supra,* singled out as ones where the courts could adjudicate the disputes: both involved claims by aliens that their rights to acquire, inherit, hold or sell land in the United States, under treaties which specifically granted them those rights, had been violated.

Asakura v. *Seattle,* 265 U.S. 332 (1924), although it does not involve land, is quite similar to the foregoing group of cases. Plaintiff therein was a Japanese citizen domiciled in the State of Washington who, because of his nationality, was denied the right, under a Seattle ordinance, to operate a pawnshop in that city. This Court held the ordinance invalid on the ground that it conflicted with a 1911 treaty between Japan and the United States.

Oneida Indian Nation v. *County of Oneida,* 414 U.S. 661 (1974), involved a suit by the Oneida Indian Tribe under a treaty to which the tribe was a party, so the question of standing obviously never arose. And *McClanahan* v. *State Tax Commission of Arizona,* 411 U.S. 164 (1973), revolved around the jurisdiction of states within Indian reservations and the question of whether federal law pre-

empted state law, rather than the rights of individual Indians under treaties.

Consequently, the Court of Appeals' conclusion that private parties failed to state a claim under any treaties is correct, is consistent with the decisions of this Court and other Courts of Appeals, and raises no issues that require this Court's resolution.

POINT II

The Court of Appeals correctly held that petitioner failed to state a claim under the law of nations.

The Court of Appeals correctly held that petitioner failed to state a claim under the law of nations both because confiscation by a nation of property within its borders is not a violation of the law of nations and because the law of nations is not self-executing and is primarily concerned with the relations of nations with one another, rather than with the rights of individuals.

Furthermore, the decision of the Court of Appeals is consistent with decisions of this Court and other Courts of Appeals.

Petitioner, an alien suing two other aliens over an allegedly tortious act occurring outside the United States, evidently claims that any tort committed anywhere in the world by anyone (whether a United States citizen or not) against anyone (other than a United States citizen), which violates the law of nations, is cognizable by a United States district court under 28 U.S.C. § 1350 even if the tort has no connection of any kind with the United States.

Moreover, petitioner apparently claims that the law of nations protects the rights of individuals as well as nations.

Neither the history of § 1350 nor the decisions construing it support such a broad, untrammelled reading of the

statute. Indeed, such a construction of § 1350 would convert the United States courts into the policemen of the world.

Significantly, petitioner has not cited, and respondents have not found, a single case in which a federal court accepted jurisdiction under § 1350 of an action that did not involve some nexus with the United States, such as a United States defendant or a tort committed in the United States.

Nor has petitioner cited, or respondents found, a single case in which the courts held that an individual, as well as a nation, had rights protected by the law of nations. In the one case where a court upheld a claim under the law of nations clause of § 1350, the court made it clear that while the individual alien had standing to sue under § 1350, his claim had to show that he was injured by a violation of his nation's rights. *Adra* v. *Clift*, 195 F. Supp. 857 (D. Md. 1961). In that case, the plaintiff, a Lebanese national, alleged that his former wife, who had remarried and who lived in the United States, had used a false passport to get their child into the United States. The court, in finding a violation of the law of nations, stressed that misuse of a passport injures both the country that issued it and the country that admits an alien in reliance on it.

Moreover, it has long been recognized that the expropriation by a state of the property of its citizens does not violate the law of nations. *Salinoff & Co.* v. *Standard Oil Co.*, 262 N.Y. 220 (1933). And this Court in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 428 (1964), observed that:

> "There are few if any issues in international law today on which opinion seems to be so divided as the limitations on a State's power to expropriate the property of aliens." (footnote omitted)

Additionally, as the Court of Appeals correctly emphasized, petitioner:

> ". . . did not allege that defendants played any role in the policymaking decision of the German government. Defendants' conduct, tortious though it may have been, was not a violation of the law of nations, which governs civilized states in their dealings with each other." (Petition for Certiorari, p. 41a)

Consequently, whether petitioner is regarded as a German or a Swiss (Petitioner claims to have been a national of both Germany and Switzerland at the time he sold his bank to respondents), he has failed to show that he has any rights under the law of nations that have been violated, or that the Court of Appeals' decision is wrong or inconsistent with any opinion of this Court or any other Court of Appeals.

POINT III

The Court of Appeals correctly held that it lacked subject matter jurisdiction to consider petitioner's claims based on Military Government Law No. 59.

The Court of Appeals correctly held that the federal courts lack subject matter jurisdiction over petitioner's claims based on Military Government Law No. 59 because it was not a "law of the United States", but only a military law of limited applicability promulgated without congressional authorization by the American Military Government of occupied Germany during a time of war. This decision, it is respectfully submitted, was wholly consistent with decisions of this Court and other Courts of Appeals.

The few cases which respondents have found involving the legal status of the relationship between the United States and territory occupied by it as a conqueror have

uniformly taken the position that the United States did not acquire sovereignty over the captured territory but served only as a caretaker government until such time as a legitimate government could be formed. See, e.g., *Cobb* v. *United States,* 191 F.2d 604 (9th Cir. 1951), which dealt with American occupancy of Okinawa following World War II, and *Acheson* v. *Wohlmuth,* 196 F.2d 866 (D.C. Cir. 1952), *Flick* v. *Johnson,* 174 F.2d 983 (D.C. Cir. 1949), and *Eisner* v. *United States,* 117 F. Supp. 197 (Ct. Cl. 1954), all dealing with occupation of post-World War II Germany.

Moreover, the American Military Government, as a creation of the President as Commander-in-Chief, was no more able to enact "laws of the United States" than is the President, and the courts have consistently held that absent specific statutory authorization, executive orders are not "laws" within the meaning of 28 U.S.C. § 1331. See, *e.g., Stevens* v. *Carey,* 483 F.2d 188 (7th Cir. 1973), *National Ass'n of Internal Revenue Employees* v. *Dillon,* 356 F.2d 811 (D.C. Cir. 1966), *McDaniel* v. *Brown & Root, Inc.,* 172 F.2d 466 (10th Cir. 1949), and *Crabb* v. *Welden Bros.,* 164 F.2d 797 (8th Cir. 1947).

Furthermore, even enactments of *Congress* are not generally considered law when they apply only within a territory under the control of the United States. See, *e.g., People of Puerto Rico* v. *Hermanos,* 309 U.S. 543 (1940), *People of Puerto Rico* v. *Shell Co.,* 302 U.S. 253 (1937), and *Harris* v. *Boreham,* 233 F.2d 110 (3rd Cir. 1956). See also, *American Security and Trust Co.* v. *Commissioners of the District of Columbia,* 224 U.S. 491 (1912) and 28 U.S.C. § 1363, which provide that for jurisdictional purposes laws applicable exclusively to the District of Columbia are not laws of the United States.

Petitioner's contention that the Court of Appeals' decision is "squarely inconsistent" with *Illinois* v. *City of Mil-*

waukee, 406 U.S. 91 (1972) and *Romero* v. *International Terminal Co.,* 358 U.S. 354 (1959), is wholly unfounded.

Romero held that federal maritime law was *not* "law" for the purposes of § 1331, and stressed and reaffirmed the "deeply felt and traditional reluctance of this Court to expand the jurisdiction of the federal courts through a broad reading of jurisdictional statutes" (358 U.S. at 379). And *City of Milwaukee* clearly did not represent a departure from the rule of strict construction of grants of jurisdiction. In holding federal common law to be "law of the United States", it simply acknowledged the significant role courts have traditionally played in filling the gaps between statutes, a role previously recognized in *Erie R.R. Co.* v. *Tompkins,* 304 U.S. 64 (1938), where this Court held that the phrase, "laws of the several states", as used in § 34 of the Federal Judiciary Act of 1789, included decisions by the courts of the states, as well as enactments of state legislatures.

Moreover, even if Military Government Law No. 59 were a "law of the United States", petitioner's action still could not be brought in a district court because Military Government Law No. 59 set up a series of courts which were to have exclusive jurisdiction of all actions brought under that military law, provided that the decisions of those courts were to be final and not reviewable, and required that all actions brought under it be commenced by December 31, 1948. Compare *Moore* v. *Sunbeam Corp.,* 459 F.2d 811 (7th Cir. 1972).

Additionally, petitioner's action does not "arise" under any "law" because it does not require a construction of Military Government Law No. 59. See *Gully* v. *First National Bank,* 299 U.S. 109 (1936).

Conclusion

Petitioner has failed to raise any question which warrants review by this Court. Petitioner's claims have already been considered and rejected four times by the federal courts—three times by the District Court and once by the Court of Appeals—and their decisions were clearly correct and entirely consistent both with the decisions of this Court and other Courts of Appeals.

The petition for certiorari should, accordingly, be denied.

Respectfully submitted,

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APPENDIX

Amended Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5271 (C.L.B.)

WILLY DREYFUS,

Plaintiff,

—against—

AUGUST VON FINCK, MUNICH, Germany, and
MERCK, FINCK & Co., Munich, Germany,

Defendants.

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1. Plaintiff Willy Dreyfus is a citizen of Basel, now residing in Montreux, Switzerland.

2. Prior to 1938 and during 1938, plaintiff was a citizen of the German Third Reich, a government no longer in existence, and also a citizen of Switzerland.

3. Defendant August von Finck is a resident and citizen of Munich, West Germany.

4. Defendant Merck, Finck & Co. is a banking and holding partnership or corporation which is domiciled in Munich, West Germany, has various business dealings and activities in the United States, including New York City within the Southern District of New York, and as such is doing business and is present in the Southern District of New York.

5. The original suit was filed and thereafter a garnishment was issued on the Chase-Manhattan Corp., a bank holding corporation and the Chase-Manhattan Bank, N.A., a wholly owned subsidiary thereof, each one of which is domiciled in the State of New York and is doing business in the Southern District of New York.

6. Jurisdiction is founded on 28 U.S.C. § 1332 and § 1350 in that plaintiff is a citizen of Switzerland, defendants, August von Finck and Merck, Finck & Co., are citizens of West Germany, and Chase-Manhattan Corp. and the Chase-Manhattan Bank, N.A., the garnishees, are citizens of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

7. Jurisdiction is also founded on 28 U.S.C. § 1331 and § 1350 in that part of the wrong complained of happened during and as a result of the occupation of West Germany by the United States pursuant to the Four Power Occupation Agreement to which the U.S. was a signatory and also because the defendants' acts complained of herein were violations of various treaties to which the U.S. and Germany were signatories included, *inter alia,* the Hague Convention, the Versailles Treaty (made applicable to the U.S. by the U.S.-Germany 1921 Treaty of Berlin), the Kellogg-Briand Pact, and the Four Power Occupation Agreement, and also because said defendants' acts complained of violated the law of nations and the universally and generally accepted rules of international law. Jurisdiction is also based upon the doctrine of pendent jurisdiction. The amount in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

8. Beginning on or about January, 1932, and thereafter, Adolph Hitler and other political, governmental and business leaders of the German Third Reich conspired and de-

termined to make aggressive war on the rest of the civilized world and determined to expand illegally, wrongfully, and in violation of treaties, the German borders as they existed as the result of the Versailles Treaty. Part and parcel of and crucial to the successful execution of such scheme, Hitler and the other said leaders adopted the policy of making it impossible for Jews to own economic assets including banking firms in Germany. Such scheme, in addition, included policies which would eliminate the Jewish people from Germany.

9. On or about January, 1938, as a result of such scheme and policies, plaintiff was forced to sell and defendants August von Finck and Merck, Finck & Co. were able because of the coercive situation in the German Third Reich to acquire wrongfully and illegally at a completely unfair, illegal, inadequate and inequitable price the banking firm of J. Dreyfus & Co. and all the plaintiff's interests therein.

10. Said unfair, illegal, inadequate and inequitable transfer was forced because plaintiff was Jewish and under the Nürnberg Laws and other decrees of Hitler could no longer own or operate a bank in Germany. Moreover, under said Laws and decrees, Jewish persons could not receive fair, adequate and appropriate compensation for such transfers.

11. The actions of Hitler and other political and business leaders of the German Third Reich which resulted in economic deprivation to Jews, including the actions described in paragraphs 8, 9, and 10 above, were one of the methods used by such leaders to expand illegally and improperly the borders of Germany and as such violated the intent and express and implied provisions of treaties to which the United States and Germany were parties, including the following, *inter alia,* Articles 1, 46 and 41 of The Hague Treaty of October 18, 1907, as well as the preamble to such treaty, the entire Kellogg-Briand Pact, and *inter alia,*

Articles 124, 227-230, 231, and 300 of the Treaty of Versailles made applicable to the United States by the 1921 U.S.-Germany Treaty of Berlin, and, in addition, violated the law of nations and universally generally accepted rules of international law. At the Nuremberg trials, it was decided that the treaty provisions quoted above, as well as the law of nations and universally and generally accepted rules of international law, were violated when the German Third Reich, Hitler, and other political and economic leaders used the economic means described herein in order wrongfully and illegally to enlarge the German territory and that such treaty provisions imposed criminal liability and sanctions on those German political, business leaders and other private persons who cooperated in or were part of the carrying out of such scheme and policies.

12. Such actions were part of the scheme of Hitler, the German Third Reich, and the political and business leaders thereof to plan for and wage war in violation of, and contrary to the treaties set forth in paragraphs 7 and 11 hereof.

13. In 1938 defendants, by taking wrongful advantage of the existence of the Nürnberg Laws and the coercive situation with respect to Jews, were able to acquire all of the assets of the banking firm of Dreyfus & Co. and plaintiff's interest therein at a completely illegal, unfair, and advantageous price and since such acquisition was made possible by the unconscionable practice of denying a group of people property rights based upon their race and religion, such acquisition by defendants even when done by private firms was in violation of the law of nations and the universally accepted rules of international law. Such actions are thus a tort by an alien in violation of the law of nations and the generally and universally accepted principles of international law as those terms are set forth in 28 U.S.C. § 1350.

14. Defendants, August von Finck and Merck, Finck & Co., thus were able wrongfully, unfairly, illegally and inequitably to acquire all rights, title and interest of plaintiff Willy Dreyfus in J. Dreyfus & Co. because of the existence of said Nürnberg Laws and decrees of Hitler which decrees and laws were illegal and contrary to the law of nations, treaties to which the United States and Germany were signatories, and humanity, and were part of the scheme to wage war against humanity and most of the nations of the civilized world.

15. As a result of said unfair, illegal and inequitable transfer of plaintiff's economic assets and the said Nürnberg Laws and other decrees of Hitler forced the plaintiff and his family to leave Germany shortly after 1938 under threat of death or imprisonment.

16. In 1945, after the fighting stopped, plaintiff sought adequate and appropriate compensation from defendants, August von Finck and Merck, Finck & Co., but even though the parties negotiated an agreement in August, 1948, which, though not completely fair and equitable, would have in part compensated plaintiff, Willy Dreyfus, for the wrong done him, said defendants, August von Finck and Merck, Finck & Co., nevertheless, wrongfully and tortiously refused to honor said agreement and, in fact, renounced it. The Four Power Occupation Agreement had imposed upon persons who wrongfully benefitted from property taken from Jews the obligation to make restitution and defendants by refusing to honor said August, 1948 agreement violated said treaty and committed a tort.

17. Defendants, August von Finck and Merck, Finck & Co., knew that as the result of Hitler's seizure, the improper treatment of Jews, the forced uprooting of plaintiff and his family and the dislocation caused by the war,

plaintiff, Willy Dreyfus, was pressed for cash; therefore said defendants, August von Finck, and Merck, Finck & Co., purposely and tortiously delayed any fair adjustment of plaintiff's rightful claim in order to achieve an unfair, unjust, inadequate, and inequitable adjustment of his claim. Such actions were a tort in violation of the law of nations, the Four Power Occupation Agreement and generally and universally accepted principles of international law, as those terms are set forth in 28 U.S.C. § 1350.

18. Despite the fact that the Allied military authorities occupied Germany, plaintiff's claim was never properly and appropriately adjusted or compensated for.

19. Some of the wrongful actions complained of, including the act of taking unconscionable advantage of the economic coercive situation in the German Third Reich with respect to Jews and thus be able to obtain an unfair bargain, are based solely upon tortious actions of the defendants and in no way upon actions of the German Third Reich and such actions independently violated the treaties referred to herein, the federal rule that wrongful conduct in violation of a treaty gives rise to a private cause of action and the law of nations and generally and universally accepted rules of international law, as those terms are used in 28 U.S.C. § 1350.

20. The total compensation paid plaintiff and J. Dreyfus & Co. by defendants for their valuable banking business was illegal, unfair, inequitable and inadequate in that it was more than $1,500,000 less than the appropriate amount of compensation which should have been paid for said business.

21. Defendants, August von Finck and Merk, Finck & Co., owe plaintiff in excess of $1,500,000 as compensation

and damages for the illegal, unfair, unconscionable acts described in paragraphs 8 through 19 of the Amended Complaint.

22. The German Third Reich which promulgated the Nürnberg Laws and the other statutes and governmental actions complained of herein, and created the business, political and social atmosphere which permitted defendants to take unconscionable advantage of plaintiff merely because of plaintiff's race and religion, is no longer in existence and in fact the country of Germany as it existed in 1938-1944 is no longer in existence since some of the territory now belongs to other nation-states and the remaining part of Germany is divided into East Germany and West Germany.

23. The U.S. Department of State issued Press Release No. 296 on April 27, 1949, entitled: "Jurisdiction of United States Courts Re Suits for Identifiable Property Involved in Nazi Forced Transfers." The substance of this Release follows:

> "As a matter of general interest, the Department publishes herewith a copy of a letter of April 13, 1949 from Jack B. Tate, Acting Legal Advisor, Department of State, to the Attorneys for the plaintiff in Civil Action No. 31-555 in the United States District Court for the Southern District of New York.
>
> "The letter repeats this Government's opposition to forcible acts of dispossession of a discriminatory and confiscatory nature practiced by the Germans on the countries or peoples subject to their controls; states that it is this Government's policy to undo the forced transfers and restitute identifiable property to the victims of Nazi persecution wrongfully deprived of such property; and sets forth that the policy of the

> Executive, with respect to claims asserted in the United States for restitution of such property, is to relieve American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials."

This policy has never been revoked by the U.S. Government and is still in full force and effect.

24. Plaintiff has made demand on defendants, but defendants have refused to pay plaintiff what is justly due him.

WHEREFORE, plaintiff demands:

(1) Judgment against defendants, August von Finck and/or Merck, Finck & Co., for a sum equal to either

(a) the fair and equitable value of what was wrongfully taken from him in 1938 and wrongfully acquired by defendants August von Finck and/or Merck, Finck & Co., in 1938 with interest and costs, or

(b) the fair and equitable value of what plaintiff was entitled to pursuant to the agreement entered into in 1948 described in paragraph 16 above, with interest and costs; and

(2) An accounting from defendants, August von Finck and Merck, Finck & Co., of the assets wrongfully taken from plaintiff and J. Dreyfus & Co. in 1938, and wrongfully acquired by defendants August von Finck and/or Merck, Finck & Co. in 1938 with gains and dividends achieved therefrom to date;

(3) Judgment for the amount of damages to plaintiff against any garnishee served in the proceeding to the extent they hold assets of, or owe money to, defendants, August von Finck and/or Merck, Finck & Co.; and

(4) Such other relief as in the premises is just and equitable.

/s/ WILLIAM T. COLEMAN, JR.
William T. Coleman, Jr.

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